

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Chapter 7

GEORGE EDWARD ASPINWALL  
XAN CHRISTINE ASPINWALL

BKY 04-43549-NCD

Debtors.

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UNITED STATES TRUSTEE'S MOTION  
TO DISALLOW ALL COMPENSATION  
RECEIVED BY ATTORNEY MARY LOCKWOOD  
AND TO ORDER THE RETURN OF ALL ATTORNEY FEES  
TO THE DEBTORS

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The United States Trustee, by his undersigned attorney, does hereby move the court under 11 U.S.C. §329(b) for an order disallowing all attorney fees and expenses received by attorney Mary Lockwood and ordering Mary Lockwood to return such fees and expenses to the debtors. In furtherance of his motion, the U.S. Trustee states as follows:

1. This matter is set for hearing at 10:30 a.m. on Wednesday, September 29, 2004, before the Honorable Nancy C. Dreher, United States Bankruptcy Judge, Courtroom 7 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415

2. Any response to this motion must be filed and delivered not later than September 24, 2004, which is three days before the hearing, (excluding Saturdays, Sundays or intervening Holidays) or filed and served by mail not later than September 20, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and intervening Holidays). See Loc. R. Bankr. P. 9006-1(b). **UNLESS**

**A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

3. This court has jurisdiction over this motion pursuant to 28 U.S.C. Sections 157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. The United States Trustee has standing to file this motion pursuant to 28 U.S.C. Section 586(a) and 11 U.S.C. Section 307. This proceeding is a core proceeding. The petition commencing this chapter 7 case was filed on June 24, 2004. John R. Stoebner was appointed chapter 7 trustee. The case is now pending in this court.

**FACTS**

4. The debtors filed the voluntary, joint petition commencing this case on June 24, 2004. The petition, schedules and statements were prepared by the law office of attorney Mary E. Lockwood.

5. The debtors met with attorney Lockwood only one time prior to the commencement of this case. That meeting was a few weeks prior to the June 24, 2004, commencement of the case.

6. The debtors initially found attorney Lockwood through an advertisement in the City Pages magazine. As a result of that advertisement, the debtors had an initial phone conversation with attorney Lockwood.

7. During the debtor's initial phone call, attorney Lockwood told the debtors what they needed to bring to their initial meeting where they would discuss the filing of a bankruptcy petition by the debtors. Subsequently, the debtors had their only personal meeting with attorney Lockwood.

8. At that personal meeting, the debtors provided attorney Lockwood with the information attorney Lockwood told them was necessary to commence their case. Attorney Lockwood had the debtors sign all documents necessary to commence this bankruptcy case, although the information needed to prepare the petition, schedules and statements had just been provided to her. Attorney Lockwood advised the

debtors that if anyone were to ask, the debtors should verify that the information in the petition, schedules and statements was all true and correct, even though they had not yet at that time been prepared. At that meeting, the debtors also paid attorney Lockwood a \$600.00 fee for handling the case plus a \$209.00 court filing fee. The Statement of Attorney compensation required by Fed. R. Bankr. P. 2016(b), as filed by Attorney Lockwood in this case, confirms her receipt of the \$600.00 fee.

9. Subsequent to their meeting, Attorney Lockwood took the debtors' information and used it to prepare the bankruptcy petition, schedules and statements in this case. Attorney Lockwood, without further contact with the debtors, filed the bankruptcy petition and schedules. The debtors never spoke to attorney Lockwood again.

10. The debtors were never given an opportunity to review the bankruptcy schedules and statements to assure their accuracy either before or after they were filed with the court.

11. Attorney Lockwood never advised the debtors of the need to appear and testify at the meeting of creditors required by 11 U.S.C. §341(a). The debtors became aware of the need for their attendance when they received the notice from the Clerk of Court. The debtors were not advised of the need to provide proof of their social security numbers or identity at the §341 meeting.

12. The debtors attended the §341 meeting of creditors held on July 19, 2004. Attorney Lockwood did not appear. After waiting for about an hour, the debtors testified before the chapter 7 trustee with the aid of another, otherwise uninvolved attorney who was present for other unrelated cases.

13. At the §341 meeting, debtor Xan Aspinwall was intentionally vague and unresponsive to the chapter 7 trustee's questions regarding the debtors' schedules and statements due to the fact that she had never seen them.

14. Subsequent to the §341 meeting, attorney Lockwood phoned the debtors and left a voice message advising them that her absence was due to car troubles. Mary E. Lockwood remains as counsel of record to the debtors in this case.

#### MOTION TO DISALLOW AND RETURN COMPENSATION

15. Cause exists for the court to enter an order under 11 U.S.C. §329(b) determining that all compensation received by attorney Mary Lockwood unreasonable and further ordering that all fees received by attorney Lockwood be returned to the debtors.

16. None of the services provided by attorney Lockwood had value because of substantial misfeasance and nonfeasance in the representation of the debtors. Specifically, the \$600.00 in attorney fees charged failed to provide any value, based on the following.

A. The debtors were never given an opportunity to review the information in their petition, schedules and statements before they were filed with the court in order to assure that the information therein was true and correct.

B. The debtors were advised by attorney Lockwood that they needed to verify the accuracy of the schedules even though they never were given the opportunity to review the information therein.

C. The debtors were never advised of the need to appear at the §341 meeting of creditors.

D. The debtors were unrepresented at the §341 meeting of creditors and the debtors and the chapter 7 trustee were required to wait unnecessarily for their counsel to appear.

E. The debtors were required to provide vague and unresponsive answers to the questions presented by the chapter 7 trustee at the §341 meeting.

F. The debtors were not advised of the need to provide proof of their social security numbers or identity at the §341 meeting, thereby necessitating that they provide such information to the chapter 7 trustee at a later time.

G. With the exception of the initial meeting before the commencement of the case, attorney Lockwood has not provided any representation of the debtors.

17. Based on the above facts, the court should enter an order under 11 U.S.C. §329(b) determining that the representation of the debtors by attorney Mary Lockwood had no value. Under that code provision, the court should further determine that the agreement between the debtors and attorney Lockwood for representation in this case should be canceled and that the \$600.00 in fees received by attorney Lockwood were excessive. Finally, the court should order that attorney Mary Lockwood be required to immediately return to the debtors \$600.00 in fees received.

18. If necessary, the United States Trustee will call the following as witnesses in support of this matter.

Xan Christine Aspinwall and/or George Edward Aspinwall. 3909 Heritage Hills Drive, Apartment #302, Bloomington, MN 55437. Ms. Aspinwall will testify regarding her discussions with Ms. Lockwood regarding the filing of the bankruptcy petition, her one meeting with attorney Lockwood, her experience at the §341 meeting of creditors, along with other relevant matters.

John R. Stoebner, chapter 7 trustee. 120 South Sixth Street, Suite 2500, Minneapolis, MN. Mr. Stoebner will testify regarding the events that occurred at the scheduled §341 meeting of creditors with the debtors.

Attorney Mary E. Lockwood. 2233 North Hamline Ave., Site 200, Roseville, MN 55113. Ms. Lockwood will testify regarding the work performed relative to this case as well as the circumstances surrounding her failure to appear at the §341 meeting of creditors, and any other relevant matters.

WHEREFORE, the United States Trustee moves the court for an order under 11 U.S.C. §329(b) determining that attorney Mary E. Lockwood provided no services of value to the debtors, that the agreement between attorney Lockwood and the debtors is canceled and that attorney Lockwood is required to immediately return to the debtors all fees received. The U.S. Trustee requests such further relief as may be just and equitable.

HABBO G. FOKKENA  
United States Trustee  
Region 12

Dated: September 1, 2004

By: e/Michael R. Fadlovich  
Michael R. Fadlovich  
Trial Attorney - Atty I.D. #158410  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55405  
612/ 664-5500

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

GEORGE EDWARD ASPINWALL  
XAN CHRISTINE ASPINWALL

Chapter 7

BKY 04-43549-NCD

Debtors.

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AFFIDAVIT OF XAN CHRISTINE ASPINWALL

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Xan Christine Aspinwall, being duly sworn and under oath, states:

1. My husband and I are the debtors in the above entitled Chapter 7 bankruptcy case which was commenced on June 24, 2004.

2. We were represented in this bankruptcy case by attorney Mary E. Lockwood.

3. We found attorney Mary Lockwood via an advertisement in the back of City Pages Magazine.

4. We had an initial phone conversation with Attorney Mary Lockwood in which she told us what to bring to a meeting with her to discuss our bankruptcy. We brought that information to our first and only meeting with attorney Mary Lockwood. That meeting was within a few weeks prior to the filing of our bankruptcy case on June 24, 2004.

5. At our one meeting with attorney Mary Lockwood we signed a number of documents she told us were needed to proceed with the bankruptcy filing. She took our information and later used that information to prepare our bankruptcy schedules and statements. At no time were we given the opportunity to review the bankruptcy schedules and statements which were filed with the court to confirm that everything in them was true and correct. In fact, attorney Mary Lockwood indicated

to us that if anyone should ask whether we had seen and verified the accuracy of the bankruptcy paperwork, we should indicate that we had. We have never had an opportunity to review the bankruptcy paperwork either before or after the bankruptcy filing and copies of what was filed with the court were never mailed or otherwise provided to us.

6. At our only meeting we also paid Mary Lockwood \$600.00 for handling the case plus an additional \$209.00 for the court filing fee.

7. After our initial meeting described above, we never again saw or spoke with attorney Mary Lockwood or anybody else in her office.

8. We became aware of the initial meeting of creditors when we received the notice of our meeting from the Clerk of Bankruptcy Court. That notice required us to appear on July 19, 2004, at 9:00 a.m. We were never told by attorney Mary Lockwood of the need for us to appear at this meeting. We were also not told that we would be required to bring identification or proof of our Social Security numbers to that meeting. I knew that our appearance was necessary only because a number of years ago I had gone through another bankruptcy case.

9. We attended the creditors meeting on July 19, 2004. Our attorney, Mary Lockwood did not appear. We waited for about an hour and when attorney Lockwood did not appear, we were helped through the process by another attorney.

10. When I was asked questions by the chapter 7 trustee at our creditors meeting on July 19, 2004, it was necessary for me to be intentionally vague and unresponsive to the trustee's questions regarding the bankruptcy schedules and statements because I had never seen them.

11. After the creditors meeting on July 19, 2004, I received a phone message from attorney Mary Lockwood indicating that she was unable to make the meeting due to car troubles.



This concludes my Affidavit.

Dated: July 30, 2004.

Xan Christine Aspinwall  
XAN CHRISTINE ASPINWALL

Sworn and Subscribed  
To Before Me This  
30<sup>th</sup> day of July,  
2004.



Lisa A. Moos  
Notary Public

VERIFICATION

I, Michael R. Fadlovich, attorney for the United States Trustee, the movant named in the foregoing motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: September 1, 2004

Signed: e/Michael R.Fadlovich

MICHAEL R. FADLOVICH

Trial Attorney

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Chapter 7

GEORGE EDWARD ASPINWALL  
XAN CHRISTINE ASPINWALL

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MEMORANDUM OF LAW IN SUPPORT OF  
UNITED STATES TRUSTEE'S MOTION  
TO RETURN ALL ATTORNEY FEES RECEIVED BY  
ATTORNEY MARY E. LOCKWOOD

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This memorandum is submitted to the Court pursuant to Local Rule 9013-3 in support of the U.S. Trustee's motion for a disallowance of fees received by counsel in the above entitled case.

Professional Fees

Under 11 U.S.C. §329(a), any attorney who represents a debtor in a case under title 11 is required to file a statement of compensation paid or agreed to be paid.

Section 329(a) provides:

Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

11 U.S.C. § 329(a).

In the present case, attorney Mary E. Lockwood filed such a statement indicating that she received \$600.00 in fees from the debtors. In addition, attorney Lockwood received from the debtors the \$209.00 filing fee.

The nature of that statement of compensation is to be set forth as required by Fed. R. Bankr. P.

2016(b). Fed. R. Bankr. P. 2016(b) provides as follows:

(b) Disclosure of Compensation Paid or Promised to Attorney for Debtor

Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 15 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 15 days after any payment or agreement not previously disclosed.

Fed. R. Bankr. P. 2016(b).

These disclosure requirements apply whether or not the attorney applies for fees in the case.

11 U.S.C. §329(b), explicitly provides that the court can order the return of fees received by counsel. In fact, Fed. R. Bankr. P. 2016(b), when read with §329, expressly authorizes the disgorgement of any excessive fees paid by the debtor to its attorney within one year before the date of the filing of the petition. In re DLIC, 120 B.R. 348, 350 (Bankr. S.D.N.Y. 1990); In re Western Office Partners, Ltd., 105 B.R. 631, 67 (Bankr. D. Cal. 1989).

Because § 329 is aimed solely at preventing overreaching by a debtor's attorney, a court's consideration of whether to order disgorgement of fees under § 329(b) is usually limited to the comparison of the amount of compensation received by the attorney with the reasonable value of the services performed. See Creative Restaurant Management, Inc., 139 B.R. 902, 917 (Bankr. W.D. Mo. 1992); In re McDonald, 114 B.R. 964, 970-72 (W.D. Tex. 1992).

Here, the alleged services had no value whatsoever. In spite of holding one meeting with the debtors, counsel provided no opportunity for the debtors to verify the information in the schedules. In fact, she gave the debtors information which appears to have been incorrect and improper.

The preparation of debtors' bankruptcy schedules has no value if the debtors are not given an opportunity to review and confirm that the information therein is true and correct. Likewise, the debtors received nothing of value from counsel subsequent to the filing of the case insofar as counsel was simply not present for any part of the case after its commencement.

Failure of a professional employed by the debtor to provide adequate representation by failing to comply with statutory requirements of the bankruptcy code (including requirements like attending the §341 meeting) requires a court review of compensation, a denial of the compensation received, and a requiring of the return of sums already paid to counsel by the debtors or on their behalf. See Matter of Schroeder, 120 B.R. 527, 529 (Bkrcty.D.Neb.1990). See also, In re Chapel Gate Apartments, Ltd., 64 B.R. 569, 575 (Bkrcty.N.D.Tex.1986) and In re Kinderhaus Corporation, 58 B.R. 94 (Bkrcty.D.Minn.1986).

Based on the foregoing, attorney Mary E. Lockwood should be required to immediately return to the debtors all fees received.

WHEREFORE, the United States Trustee respectfully submits this memorandum of law in support of his motion to disallow compensation and for an order requiring the return of compensation to the debtors. The U.S. Trustee submits that the court order Attorney Mary E. Lockwood to immediately return to the debtors all fees and expenses received.

HABBO G. FOKKENA  
United States Trustee  
Region 12

Dated: September 1, 2004

By: e/Michael R. Fadlovich

Michael R. Fadlovich  
Attorney/Advisor #158410  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55405  
612/ 664-5500

CERTIFICATE OF SERVICE

In Re:	)	
	)	
George Edward Aspinwall		Bankruptcy No. 04-43549
Xan Christine Aspinwall	)	
Debtor(s).	)	Chapter 7 Case
	)	
	)	

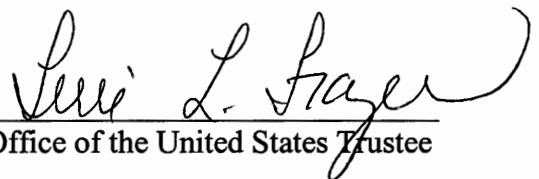
I, Terri L. Frazer, declare under penalty of perjury that on September 1, 2004, I served a copy of the foregoing US Trustee's Motion to Disallow all Compensation Received by Attorney Mary Lockwood and to Order the Return of all Attorney Fees to the Debtors by U.S. mail, postage prepaid, to each person named below:

George and Xan Aspinwall  
3909 Heritage Hills Drive #302  
Bloomington, MN 55437

Mary E. Lockwood  
2233 N. Hamline Ave., Suite 200  
Roseville, MN 55113

John R. Stoebner  
2500 One Financial Plaza  
120 South Sixth Street  
Minneapolis, MN 55402

Dated: 9-1-04

By:   
Office of the United States Trustee

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Chapter 7

GEORGE EDWARD ASPINWALL  
XAN CHRISTINE ASPINWALL

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ORDER

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At Minneapolis, Minnesota, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

This matter came before the Court for hearing on the Motion by the U.S. Trustee for an order seeking disallowance of and a return to the debtors of all attorney fees and expenses received by attorney Mary E. Lockwood. Such motion was based on attorney Mary Lockwood's failure to properly and completely undertake the representation of the above named debtors in the above entitled case. Michael R. Fadlovich appeared on behalf of the United States Trustee. Other appearances were noted in the record.

The Court made its findings of fact and conclusions of law on the record pursuant to Rule 52 of the Federal Rules of Civil Procedure and Federal Rule of Bankruptcy Procedure 7052. Base on those findings, IT IS HEREBY ORDERED

That pursuant to 11 U.S.C. §329(b), the attorney fees received by Mary E. Lockwood in this case are disallowed. Attorney Mary Lockwood shall, within seven days of the entry of this order, return to the debtors the sum of six hundred dollars (\$600.00). Attorney Mary E. Lockwood will also provide to the United States Trustee verification of such payment.

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NANCY C. DREHER  
United States Bankruptcy Judge